

ORDINANCE NO. 17- 14 – U

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
AUBURN REPEALING AND REPLACING SECTION 159.019 OF CHAPTER  
159 OF TITLE XV OF THE AUBURN MUNICIPAL CODE REGARDING  
MARIJUANA REGULATION

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**WHEREAS**, Government Code sections 36934, 36937, and 65858 permit the City to adopt an urgency ordinance for the immediate preservation of the peace, health, safety or welfare, to prohibit any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the City Council and/or its planning department is considering or studying or intends to study within a reasonable time; and

**WHEREAS**, In 2016 California voters approved Proposition 64 entitled, "The Adult Use of Marijuana Act", which legalized limited recreational use and cultivation of marijuana. On June 27, 2017, the Governor signed Senate Bill (SB) 94, which created a single regulatory protocol for medical and recreational marijuana. SB 94 amended Proposition 64 and created a new statewide regulatory system requiring local government action to expressly regulate or prohibit marijuana activity and businesses; and

**WHEREAS**, according to the provisions of SB 94, unless local agencies have a land use ordinance in place by **January 1, 2018**, the state will begin issuing licenses to marijuana businesses. If the City has adopted no ordinance addressing marijuana businesses, then the state may unilaterally issue a license for such a business. The state assumes all

marijuana businesses are permitted in a local jurisdiction unless that jurisdiction takes affirmative steps to limit them;

**WHEREAS**, the United States Supreme Court has continuously held that marijuana, including medical marijuana, violates Federal law under the CSA. In 2001, the Court held in *United States v. Oakland Cannabis Buyers Cooperative, et al.* that there was no “medical necessity” defense under the CSA, and therefore a medical marijuana dispensary could be enjoined from distribution and manufacturing. In 2005, the Court held in *Gonzalez v. Raich* that the Commerce Clause authorizes Congress to prohibit the cultivation or use of marijuana for medical purposes permitted by California law. The significance of the *Raich* decision is that Federal law enforcement agents may continue to enforce Federal drug laws against Californians who cultivate or use marijuana for medical purposes; and

**WHEREAS**, prohibiting the cultivation of marijuana, the delivery of marijuana, and marijuana dispensaries within the City as business activities and uses is necessary to protect the health, safety and welfare of the community, and to prevent adverse impacts that such activities may have on nearby properties and residents; and

**WHEREAS**, due to the short period of time available to the City to regulate marijuana cultivation in order to avoid the preemption of its local authority to do so, an urgency ordinance is necessary to respond to a newly arisen requirement and to protect the health and safety of the City’s residents.

**WHEREAS**, this Ordinance is an interim ordinance adopted as an urgency measure pursuant to Government Code Section 65858 and is for the immediate preservation of the public peace, health and welfare.

Now, therefore, THE CITY COUNCIL OF THE CITY OF AUBURN ORDAINS AS FOLLOWS:

**Section One: Findings.** The recitals above are true and correct and incorporated herein by reference.

**Section Two: Code Amendment.** Section 159.019 of Chapter 159 of Title XV of the Auburn Municipal Code entitled "Prohibited Uses" is hereby repealed and replaced in its entirety as set forth in the attached Exhibit "A".

**Section Three: California Environmental Quality Act.** The City Council has considered all of the evidence in the record, including the staff reports, the testimony received during the meeting on the matter held by the City Council, and hereby determines that that the adoption of this Ordinance will not have a significant effect on the environment. This Ordinance is therefore exempt from California Environmental Quality Act review pursuant to Title 14, Section 15061(b)(3) of the California Code of Regulations.

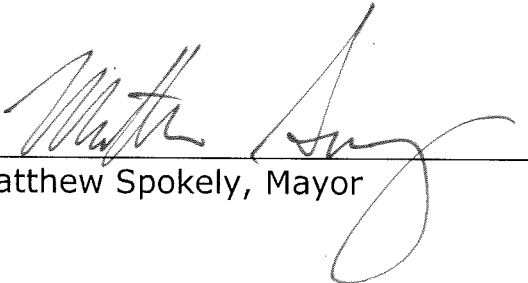
**Section Four: Severability.** If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance or the rules adopted hereby. The

City Council of the City of Auburn hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.


**Section Five: Effective Date.** Pursuant to Sections 36934, 36937(B), and 65858 of the California Government Code, this Ordinance shall take effect immediately because its passage is required for the immediate preservation of the public peace, health, and safety. Delivery and cultivation of marijuana and the operation of marijuana dispensaries within the City has the potential to create significant adverse effects on the health and safety of residents and visitors, without immediate action the City will lose the ability to regulate such conduct, and therefore it is necessary that this Ordinance be effective immediately.

**Section Six: Certification.** The City Clerk shall certify to the passage and adoption of this Ordinance and shall give notice of its adoption as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be published and posted in lieu of publication and posting of the entire text.

DATED: November 13, 2017

  
Matthew Spokely, Mayor

ATTEST:

  
\_\_\_\_\_  
Amy Lind, City Clerk

I, Amy Lind, City Clerk of the City of Auburn, hereby certify that the foregoing ordinance was duly passed at a regular meeting of the City Council of the City of Auburn held on the 13th day of November 2017 by the following vote on roll call:

Ayes: Kirby, Berlant, Maki, Powers, Spokely

Noes:

Absent:

Abstain:

  
\_\_\_\_\_  
Amy Lind, City Clerk

## EXHIBIT "A"

### **§ 159.019 PROHIBITED USES.**

(A) *Definitions.* For the purposes of this section, the words and phrases will have the same meanings respectively ascribed to them herein:

**ACCESSORY BUILDING** has the same meaning as found in section 159.001 of this code. It is the intent of this section to ensure that all accessory buildings comply with Chapter 159 of this code.

**AUTHORIZED GROWER** means a person with an identification card, primary caregiver, qualified patient, or a person who is authorized by federal or state law to cultivate marijuana for personal use in compliance with local, state, or federal laws authorizing such marijuana cultivation.

**CANNABIS, MARIJUANA, MEDICAL CANNABIS,** and/or **MEDICAL MARIJUANA** includes the definition of "cannabis" as set forth in Business and Professions Code section 26100, subdivision (f), and Health and Safety Code section 11018, as may be amended from time to time, and are used interchangeably and mean all parts of the plant *Cannabis sativa linnaeus*, *Cannabis indica*, or *Cannabis ruderalis*, whether for a medical purpose or a non-medical purpose, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. This includes the separated resin, whether crude or purified, obtained from marijuana. This section does not mean "industrial hemp" as defined by California Food and Agricultural Code

section 81000, as may be amended, or California Health and Safety Code section 11018.5, as may be amended.

**CULTIVATION** or **CULTIVATE** means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana plants.

**DELIVERY** or **DELIVER** means any transfer of marijuana or marijuana products, whether for compensation or otherwise, and shall include the definition of "delivery" as set forth in Business and Professions Code section 26100, subdivision (h), as may be amended from time to time.

**DISTRIBUTION** means the procurement, sale, transfer, and/or transport of marijuana and/or marijuana products.

**FULLY ENCLOSED AND SECURE STRUCTURE** means a space within a parcel that complies with the California Building Standards Code, as adopted in the City of Auburn, or if exempt from the permit requirements of the California Building Standards Code, that has a complete roof enclosure supported by connecting walls extending from the ground to the roof; a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments; is secure against unauthorized entry; and is accessible through one or more lockable doors. Walls and roofs must be constructed of solid materials that cannot be easily penetrated or breached, such as two-inch by four-inch nominal or thicker studs overlaid with three-eighths inch or thicker plywood or the equivalent. Plastic sheeting, regardless of gauge, or similar products, do not satisfy this requirement. If indoor grow lights or air filtration systems are used, they must comply with the California Building, Electrical, and Fire Codes as adopted in the City of Auburn.

**IMMATURE MARIJUANA PLANT** means a marijuana plant, whether male or female, that has not yet flowered and which does not yet have buds that are readily observed by unaided, visual examination.

**INDOOR** and/or **INDOORS** means within a fully enclosed and secure structure as that structure is defined in this subsection.

**MARIJUANA DISPENSARY** or **DISPENSARY** means a facility or location, whether permanent, temporary, or mobile, where marijuana, marijuana products, or devices for the use of marijuana are offered, either individually or in any combination, for sale, use, transportation, distribution, and/or delivery, whether for compensation or otherwise, by or to: (1) another dispensary or processing facility; or (2) two or more of the following: a primary caregiver, a qualified patient, a person with an identification card, or anyone authorized under state law to use marijuana.

**MARIJUANA PRODUCTS** has the same definition as in California Health and Safety Code section 11018.1, as may be amended

**MATURE MARIJUANA PLANT** means a marijuana plant, whether male or female, that has flowered and which has buds that are readily observed by unaided visual examination.

**MEDICAL PURPOSE** means cultivation and/or use of marijuana by a primary caregiver, qualified patient, and/or person with an identification card for personal medical purposes, as provided by California Health and Safety Code 11362.7 et seq.

**NON-MEDICAL PURPOSE** means cultivation and/or use of marijuana by a person other than a primary caregiver, qualified patient, and/or person with an identification card, who is otherwise authorized under



local, state, or federal laws to cultivate marijuana, for personal non-medical use.

**OUTDOOR** and/or **OUTDOORS** means any location within the City of Auburn that is not within a fully enclosed and secure structure.

**PARCEL** means property assigned a separate parcel number by the Placer County assessor.

**PERSON** means any individual, entity partnership, co-partnership, firm, association, joint stock company, corporation, limited liability company or combination of the above in whatever form or character.

**PERSON WITH AN IDENTIFICATION CARD** has the same definition as California Health and Safety Code section 11362.7 et seq., as may be amended, and as may be amended by California Department of Public Health's "Medical Marijuana Program".

**PRIMARY CAREGIVER** has the same definition as in California Health and Safety Code section 11362.7 et seq., as may be amended.

**PRIVATE RESIDENCE** means a house, apartment unit, mobile home, or other similar dwelling unit.

**PROCESSING FACILITY** means any facility or location, whether permanent, temporary, or mobile, that produces, prepares, propagates, processes, or compounds marijuana or marijuana products, directly or indirectly, by any method, for delivery, distribution, or sale, whether for compensation or otherwise. Processing facility does not mean any facility or location manufacturing "industrial hemp" as defined by California Food and Agricultural Code

section 81000, as may be amended, or California Health and Safety Code section 11018.5, as may be amended.

**PUBLIC PLACE** means any place or area open to the public, including but not limited to public streets, sidewalks, right-of-ways, parks, public parking facilities, any public transit services, and/or property or programs owned or operated by the City.

**QUALIFIED PATIENT** has the same definition as in California Health and Safety Code section 11362.7 et seq., as may be amended.

**TESTING LABORATORY** means a facility, person, or location that offers or performs tests of marijuana or marijuana products.

(B) *MARIJUANA DISPENSARIES, PROCESSING FACILITIES, AND TESTING LABORATORIES PROHIBITED.*

It is hereby declared to be unlawful, a public nuisance, and a violation of this section for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises or location within any zoning district in the City of Auburn, the operation of a marijuana dispensary, and/or processing facility, and/or testing laboratory. Nothing in this section prohibits those activities expressly authorized under California Health and Safety Code section 11362.1.

(C) *DELIVERY OF MARIJUANA PROHIBITED.*

Delivery of marijuana, marijuana products, or devices for the use of marijuana to or from any person, business, or location in the City of Auburn is unlawful, a public nuisance, and a violation of this section. Notwithstanding the foregoing, a primary caregiver may personally

deliver medical marijuana, marijuana products, or devices for the use of marijuana to a qualified patient or person with an identification card, for whom he or she is the primary caregiver. Nothing in this section prohibits those activities expressly authorized under California Health and Safety Code section 11362.1.

(D) *OUTDOOR MARIJUANA CULTIVATION.*

It is hereby declared to be unlawful, a public nuisance, and a violation of this section for any person owning, leasing, occupying, or having charge or possession of any parcel, property, and/or private residence, within any zoning district in the City of Auburn to cause or allow such parcel, property, and/or private residence to be used for the outdoor cultivation of marijuana plants.

(E) *CULTIVATION OF MARIJUANA — REGULATIONS FOR RESIDENTIAL ZONES.*

(1) When authorized by state law, an authorized grower will be allowed to cultivate marijuana indoors only on a parcel with a private residence in a residential zone, subject to the following regulations:

(a) The private residence is the primary residence of the authorized grower.

(b) The authorized grower does not exceed the maximum allowed cultivation of six (6) marijuana plants per private residence or accessory building(s), regardless of whether they are mature marijuana plants or immature marijuana plants, and regardless of whether the cultivation is for a medical purpose or a non-medical purpose.

- (c) Marijuana cultivation may not occur in both an accessory building and a private residence on the same parcel. Only one cultivation area is allowed per private residence.
- (d) From a public right-of-way, there must be no exterior evidence of marijuana cultivation either within or outside the private residence or accessory building.
- (e) The private residence must maintain kitchen, bathrooms, and primary bedrooms for their intended use and not be primarily or exclusively used for marijuana cultivation.
- (f) The marijuana cultivation area must not constitute a nuisance or adversely affect the health or safety of the occupants of other properties by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, and must not be maintained so as to constitute a hazard due to use or storage of materials, processes, products, or wastes.

(F) *INDOOR CULTIVATION OF MARIJUANA RESTRICTED TO AUTHORIZED GROWERS.*

It is hereby declared to be unlawful, a public nuisance, and a violation of this section for any person owning, leasing, occupying, or having charge or possession of any parcel, property, and/or private residence, within the City of Auburn to cause or allow such parcel, property, and/or private residence to be used for the cultivation of marijuana, unless the person is authorized by state law to grow marijuana, and

such authorized grower is complying with all requirements of this section.

(G) *CULTIVATION PERMIT REQUIRED.*

(1) Prior to and while engaging in any indoor cultivation of marijuana pursuant to this section, an authorized grower must obtain and maintain in force a cultivation permit from the Planning and Public Works Director or her or his designee, which cultivation permit will be granted upon the submission and verification of the information required in subsection (G)(1)(a) & (b). The following information will be required with the initial permit application and any subsequent permit extensions:

(a) The physical site address of where the marijuana will be cultivated.

(b) The name and proof of age of each authorized grower who participates in the marijuana cultivation on any parcel, property, and/or private residence where marijuana will be cultivated.

(2) Unless revoked pursuant to this section, the initial permit will be valid one year and may be extended thereafter in increments of one year in accordance with subsection (G)(1).

(3) An application for a cultivation permit and a cultivation permit renewal as required by this section must be accompanied by an application fee, as established by resolution of the City Council.

- (4) Any cultivation permit issued pursuant to this section will be subject to suspension or revocation by the Planning and Public Works Director or her or his designee within 10 days after notice thereof. The permittee will have the right to a hearing thereon before the City Council upon a written request within the 10 days after the receipt of the notice. If no timely request for hearing is submitted, the determination of the Planning and Public Works Director becomes final, non-appealable, and not subject to judicial review due to a failure to exhaust administrative remedies.

(H) *PUBLIC NUISANCE PROHIBITED.*

It is hereby declared to be a public nuisance and a violation of this section for any person to create a public nuisance in the course of cultivating and/or using marijuana or marijuana products in any location, indoor or outdoor. A public nuisance may be deemed to exist, if such activity produces:

- (1) Odors which are disturbing to people of normal sensitivity residing or present on adjacent or nearby property or areas open to the public.
- (2) Repeated responses to the parcel, property, and/or private residence, from law enforcement officers.
- (3) A repeated disruption to the free passage of persons or vehicles in the immediate neighborhood, excessive noise which is disturbing to people of normal sensitivity on adjacent or nearby property or areas open to the public.

- (4) Any other impacts on the neighborhood or public generally which are disruptive of normal activity in the area, including but not limited to smoking or ingesting marijuana or marijuana products in any public place, smoking marijuana or marijuana products in a location where smoking tobacco is prohibited, or any other prohibited activities outlined in California Health and Safety Code section 11362.3, as may be amended from time to time.

(I) *VIOLATIONS.*

- (1) A violation of this section constitutes a violation of this code and is subject to revocation of a cultivation permit as provided by subsection (G)(4) and/or the penalties and enforcement options as provided in sections 10.80 through 10.99 of this code.
- (2) The administrative fine for any violation of this section will be a fine of up to one thousand dollars (\$1,000) per violation.
- (3) No conduct which is protected from criminal liability pursuant state law, including but not limited to the Compassionate Use Act (Cal. Health and Safety Code § 11362.5) or the Medical Marijuana Program Act (Cal. Health and Safety Code §§ 11362.7 through 11362.83) will be made criminal by this code.